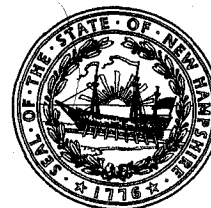




The State of New Hampshire  
**Department of Environmental Services**



Michael P. Nolin  
Commissioner

Anthony Poissant  
Cathy Poissant  
95 Slab Bridge Road  
Assonet, MA 02702

Re: 28 Elm Street, Ossipee Tax Map 55, Lot 23  
File # 2002-1385

**NOTICE OF PROPOSED  
ADMINISTRATIVE FINE  
No. AF 05-096**

December 22, 2005

**I. INTRODUCTION**

This Notice of Proposed Administrative Fine is issued by the Department of Environmental Services, Water Division to Anthony and Cathy Poissant, pursuant to RSA 482-A and NH Admin. Rule Env-C 601. The Division is proposing that fines totaling \$4,500 be imposed against Anthony and Cathy Poissant for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

**II. PARTIES**

1. The Department of Environmental Services, Water Division ("the Division"), is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Anthony and Cathy Poissant are individuals having a mailing address of 95 Slab Bridge Road, Assonet, MA 02702.

**III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS**

1. Pursuant to RSA 482-A, the Department of Environmental Services regulates dredging, filling, and construction in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.
3. Anthony and Cathy Poissant are the owners of land located on 28 Elm Street, Ossipee, more particularly described on Town of Ossipee Tax Map 55 as Lot 23 ("the Property"). The Property has approximately 270 feet of frontage on Duncan Lake.
4. On June 20, 2002, the Division received a complaint alleging that large piles of sand had been placed on the lake frontage of the Property.

5. On July 19, 2002, the Division received a Minimum Impact Expedited Application ("the Application") from Mr. and Ms. Poissant to retain the sand for beach replenishment and to install a retaining wall to keep the sand from washing away.

6. On August 15, 2002, the Division issued a Notification of Incomplete Expedited Application ("the Notification") to Mr. and Ms. Poissant. The Notification requested additional information needed to evaluate the Application. The Notification included a request to respond the Notification within 120 days.

7. Division records indicate that no response was received within the requested time frame.

8. On January 2, 2003, the Division sent a follow-up letter to Mr. and Ms. Poissant requesting an update of the status of the Application. The letter requested a response by January 17, 2003.

9. Division records indicate that no response to the January 2, 2003 letter was received.

10. By letter dated July 17, 2003, the Ossipee Conservation Commission requested Mr. and Ms. Poissant attend the August 2003 Conservation Commission meeting to update the Commission on the status of the Application.

11. The August 13, 2003 minutes of the Ossipee Conservation Commission state that Mr. Poissant "reported that nothing had been done with the pile of sand because he is waiting for the state's approval."

12. On February 16, 2005, Division personnel spoke with Ms. Poissant by telephone. Ms. Poissant stated the following:

- a. In 2002, the Poissants had two large piles of sand delivered to their property;
- b. The sand piles have not been spread;
- c. The reason they wanted the retaining wall was to prevent pre-existing sand from washing into Duncan Lake; and
- d. The sand was washing into Duncan Lake because of storm water runoff from Elm Street. The town road agent had visited the property in 2003 and Ms. Poissant was expecting the town to address the runoff, but to date, the town had not done so.

13. By letter dated February 17, 2005, the Division informed Mr. and Ms. Poissant that if the information requested in the Notification was not received by March 1, 2005, a new application would be required to retain the sand.

14. Division records indicate that the requested information was not received.

15. On May 25, 2005, Division personnel conducted a field inspection of the Property and found:

- a. One pile of sand measuring approximately 18 feet x 18 feet was observed within the bank

of Duncan Lake;

b. A second pile of sand measuring approximately 18 feet x 18 feet was observed landward of Duncan Lake and out of DES jurisdiction; and

c. A real estate "For Sale" sign was observed on the front lawn of the Property.

16. On June 27, 2005, the Division issued Administrative Order No. WD 05-018 ("the Order") to Anthony and Cathy Poissant. The Order required Mr. and Ms. Poissant to:

a. Remove the sand pile located within the bank of Duncan Lake and relocate it landward to the top of the bank by July 15, 2005; and

b. Submit photographs and a letter documenting removal/relocation of the sand, per the Order, by July 30, 2005.

17. The Order was received by Ms. Poissant on June 29, 2005, as evidenced by the signed certified mail return receipt.

18. On July 7, 2005, Division personnel spoke with Ms. Poissant by telephone. Ms. Poissant stated the following:

a. Storm water runoff from Elm Street had created an intermittent drainage channel from Elm Street, bisecting their property until it reached their shoreline at Duncan Lake. The runoff eroded the pre-existing beach. Ms. Poissant had contacted the town of Ossipee to address the runoff, but the town did not take any action to alleviate the storm water runoff; and

b. The purpose of the sand had been to replenish the beach that had been washed away from the intermittent drainage channel.

19. Division personnel advised Ms. Poissant that the requirements stated in the Order were still valid.

20. On September 29, 2005, Division personnel performed a second inspection of the Property and found that the sand had not been removed.

21 On September 29, 2005, the DES Legal Unit issued a letter to Mr. and Ms. Poissant reminding them that the Order was still valid and requesting a written statement and photographic evidence that compliance with the Order had been achieved within 10 days of the date of the letter.

22. Division records indicate that a response has not been received.

#### IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINE(S)

1. Mr. and Ms. Poissant have violated RSA 482-A:3 by placing approximately 400 square feet of sand into a jurisdictional area. For this violation, Env-C 614.02(a) authorizes a fine of \$500.
2. Mr. and Ms. Poissant have violated Administrative Order No. WD 05-018 issued on June 27, 2005, pursuant to RSA 482-A:6, by:
  - a. Failing to remove the sand; and
  - b. Failing to provide documentation that the sand had been removed.

For these violations, Env-C 614.06(e) specifies a fine of \$2,000 per violation of an order, or \$4,000 for the violations of Administrative Order No. WD 2005-018 issued by DES pursuant to RSA 482-A:6 on June 27, 2005.

**The total fine being sought is \$4,500.**

#### V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING

**Pursuant to Env-C 601.06, Anthony and Cathy Poissant are required to respond to this notice. Please respond no later than January 27, 2006 using the enclosed colored form.**

1. If you would like to have a hearing, please sign the appearance section of the colored form (upper portion), check the appropriate line requesting a **formal hearing** and return it to the DES Legal Unit, at the address noted on the form.
2. If you wish to discuss the possibility of settling the case, please sign the appearance, check the appropriate line indicating a desire to **meet informally** and return it to the DES Legal Unit.
3. If you choose to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and comply with NH Admin. Rule Env-C 200.

#### VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be

imposed, subject to the following:

\* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence**, applies in this case:

1. The violation was a one-time or non-continuing violation, **and** that you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** that you did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.
3. You have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.

**\*\*\*\*\*IMPORTANT NOTICE\*\*\*\*\***

**An administrative fine hearing is a formal hearing.** All hearings will be recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is your opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If you have any evidence, such as photographs, business records or other documents, that you believe show you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

\*\*\*\*\*

Information regarding this proposed fine may be made available to the public via the DES Web page ([www.des.nh.gov](http://www.des.nh.gov)). If you have any questions about this matter, please contact the DES Legal Unit, at (603) 271-6072.

**COPY**

\_\_\_\_\_  
Harry T. Stewart, P.E.  
Director, Water Division

Enclosure (NHDES Fact Sheet #CO-2002)

cc: Michael J. Walls, DES Assistant Commissioner  
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB  
Public Information Officer, DES PIP Office  
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit  
Linda Magoon, DES Wetlands Bureau  
cc: NH Association of Conservation Commissions  
Town of Ossipee Conservation Commission  
Town of Ossipee Board of Selectmen

**\*\*\* RETURN THIS PAGE ONLY \*\*\***

**ANTHONY AND CATHY POISSANT ARE REQUIRED BY LAW  
TO RESPOND TO THIS NOTICE.**

**PLEASE RESPOND NO LATER THAN January 27, 2006**

Please check the appropriate line and fill in the requested information below:

**APPEARANCE** On behalf of Anthony and Cathy Poissant:

\_\_\_\_\_ We request to have a **formal hearing** scheduled in this matter.

\_\_\_\_\_ We would like to **meet informally** to discuss the issues in this matter.

**WAIVER OF HEARING** On behalf of Anthony and Cathy Poissant:

\_\_\_\_\_ We certify that we understand the right to a hearing regarding the imposition of the proposed administrative fine and that we hereby waive those rights. The fine payment in the amount of \$4,500 paid to "Treasurer, State of New Hampshire" is enclosed.\*

*\*If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

**Pursuant to Env-C 203.05 please provide the following information:**

\_\_\_\_\_  
Signature Date

Name (please print or type): \_\_\_\_\_

\_\_\_\_\_  
Signature Date

Name (please print or type): \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

**RETURN THIS PAGE ONLY AND ANY PAYMENT TO:**

**DES Legal Unit**

**Attn: Michael Sclafani, Legal Assistant**

**P.O. Box 95, Concord, NH 03302-0095**

# ENVIRONMENTAL Fact Sheet



29 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • [www.des.nh.gov](http://www.des.nh.gov)

CO-2

2002

## Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (DES) is authorized by several statutes to impose administrative fines for certain violations of those statutes. In order to implement this authority, the Commissioner has adopted rules which specify the procedures for notifying people that a fine is being proposed and which specify the fine amount for any given violation. These rules are identified as Chapter Env-C 600.

Administrative fine proceedings follow a defined path. The first step is for a Division of DES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the Division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a final decision as to whether to impose the fine **has not been made** ... the Notice simply initiates the proceeding. The Notice will also inform you that you have a right to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will have a page attached to it on which you can indicate whether you will attend a hearing or whether you are waiving your right to a hearing and paying the fine which has been proposed. **YOU MUST COMPLETE AND RETURN THIS FORM.** The worst thing you can do if you receive a Notice is to ignore it! Under the rules which have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspended fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will not have prior knowledge of the Division's allegations, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

(over)



After the hearing is over, the hearing officer will compile the record (i.e. all of the information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 601.09. These include that you have not previously violated a law or rule implemented by DES, or that you acted in good faith. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with DES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such a case, DES has accepted payment of the fine with a specific denial of liability. This is like pleading "no contest" to a traffic ticket: you pay the fine assessed, but are not admitting that you did anything wrong.

*This fact sheet is intended as a basic source of information concerning DES administrative fines. It is not intended to replace the laws and rules regarding administrative fines, but merely to provide a summary of them.*

For more information contact the DES Legal Unit, PO Box 95, Concord, NH 03302-0095, (603) 271-6072.